

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Adam Olson, Petitioner-Appellant, v. Iowa County Board of Review, Respondent-Appellee.	ORDER Docket No. 12-48-0330 Parcel No. 7328-2603-0
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On July 30, 2013, the above captioned appeal came on for hearing before the Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2) and Iowa Administrative Code rules 701-71.21(1) et al. The Appellant Adam Olson was self-represented. Assistant County Attorney L.C. McMeen represented the Iowa County Board of Review. The Appeal Board having examined the evidence, heard the testimony, and being fully advised finds:

Findings of Fact

Adam Olson is the owner of a commercial property (called a three-family conversion) located at 154 East Hilton Street in Marengo, Iowa. According to the property record card, the property is a two-story, frame home built in 1890 with 2556 square feet of total living area and a full, unfinished basement. The home also has a 144 square-foot deck, two open porches totaling 269 square feet and a 400 square-foot, detached garage built in 1940. The home is below-average quality (grade 5) and is in poor condition. The site is 0.196 acres.

Olson protested to the Board of Review regarding the 2012 assessment of \$46,350, which was allocated as follows: \$13,260 in land value and \$33,090 in improvement value. The January 1, 2012 assessment changed from the prior year, therefore making all grounds available for appeal.

Olson appealed to the Board of Review on the ground that there was an error in assessment under Iowa Code section 441.37(1)(a)(4). Section 441.37(1)(a)(4) gives rise to an error claim and does not limited the ground solely to clerical or mathematical errors. Olson contended the building, which is listed as a triplex, should be listed as a duplex. The Board of Review denied his claim.

Olson then appealed to this Board re-asserting his claim. Olson testified that he only rents two of the building's three units. He asserts that because the unrented unit does not have a separate bedroom and is very small (320 square feet according to the property record card), it is not rentable. Further, he asserts that in any event the circuit breaker needs to be reset it would require landlord access because the electrical panel for the entire property is located in this unit. Olson also uses this unit for storage and allows his father, who owns an adjacent property, access to this unit for personal use. He testified the property's previous owner allowed workers he employed to live in this apartment.

The Board of Review provided a copy of the subject property's record card and Iowa County Assessor Linda Griggs testified on its behalf. She testified the subject property had been a triplex for some time and therefore is classified commercial. Griggs testified she inspected the property in February of 2011. At the inspection she observed the apartment consisted of a bathroom, kitchen, and living area with a mattress. When Olson acquired the property neither Griggs nor the Board or Review believed that because Olson chose not to rent one of the units was a sufficient reason to change the classification.

Based on the evidence, we find that Olson has failed to prove, by preponderance of the evidence, that there is an error in the assessment.

Conclusion of Law

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. This Board is an agency and the provisions of the Administrative Procedure Act apply. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board

determines anew all questions arising before the Board of Review, but considers only those grounds presented to or considered by the Board of Review. §§ 441.37A(3)(a); 441.37A(1)(b). New or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption the assessed value is correct. § 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

Olson's claim is that the subject property is erroneously listed as a triplex, whereas it should be listed as a duplex. A reduction in the number of the property's living quarters from two to three would also change the property's classification from commercial to residential. The Iowa Department of Revenue has promulgated rules for the classification and valuation of real estate. *See* Iowa Admin. Code r. 701-71.1. Classifications are based on the best judgment of the assessor following the guidelines set out in the rule. r. 701-71.1(1). Boards of Review, as well as assessors, are required to adhere to the rules when they classify property and exercise assessment functions. r. 701-71.1(2).

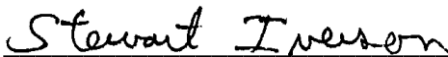
Iowa Administrative Rule 701-71.1(4) specifically excludes structures containing three or more separate living quarters from the residential real estate classification. Conversely, Rule 701-71.1(5) provides that structures consisting of three or more separate living quarters are classified as commercial property. Therefore, the primary issue this Board must resolve is whether the unit in question constitutes a separate living quarter under the administrative rules.

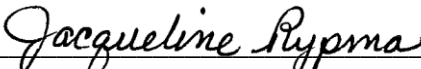
The Appeal Board finds the subject property's unrented unit qualifies as a separate living quarter and the property is properly classified commercial. The evidence and testimony established the apartment contains a kitchen, bathroom, and a living area which may be used as a bedroom. Essentially, the unit is an efficiency or studio apartment. Further, Olson testified the previous owner

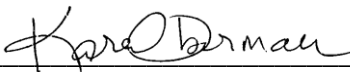
allowed workers whom he employed to live in the apartment. The apartment does not cease to be a separate living quarter simply because Olson chooses not to rent it and instead uses the space for other purposes.

THE APPEAL BOARD ORDERS the assessment of Adam Olson's property located at 154 East Hilton Street, Marengo, Iowa as of January 1, 2012, as set by the Iowa County Board of Review, is affirmed.

Dated this 21st day of August, 2013.


Stewart Iverson, Presiding Officer



Jacqueline Rypma, Board Member


Karen Oberman, Board Member

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Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>August 21, 2013</u> .	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
	
Signature _____	